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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,030	09/30/2003	Arne Schulze	P03-SCHUL-0057	7509
34744	7590	02/10/2004	EXAMINER	
THE LAW OFFICE OF RICHARD S ERBE P.O. BOX 418 5380 SENECA PLACE SIMI VALLEY, CA 93062			MILLER, BENA B	
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/675,030

**Applicant(s)**

SCHULZE, ARNE

**Examiner**

Bena Miller

**Art Unit**

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>09/30/03</u>  | 6) <input type="checkbox"/> Other: ____                                     |

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is lack of proper antecedent basis for the claimed subject matter "a program selection pitch" and "a pitch-shifting switch".

### ***Claim Objections***

Claim 39 is objected to because of the following informalities: It appears that the number "38" is a typographical error. The number "38" should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8-10, 15, 24, 25, 30, 32-34, 36, 43, 44, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Milner.

Regarding claims 1 and 24, Milner teaches in the figures 1 and 2, a sound producing apparatus comprising a toy, generally in the form of a puppet having a head portion including a pair of opposed jaw members movable between a first position and a second position (5; fig. 1); a sound producing unit located in said puppet, said sound producing unit including a speaker for outputting audio (14, fig. 1); and a switch for

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selectively actuating said sound producing unit to initiate at least one verbal audio event (10) in synchronization with the movement of the jaw members (12 [The examiner takes the position that the sensor meets the definition of the claimed switch]).

Regarding claim 2, 25 and 44, Milner further teaches the audio event is actuated by said switch when said jaw members move between said first position and said second position and is terminated by said switch when said jaw members return to said first position (col. 2, lines 53-66).

Regarding claims 8, 10, 32, 34, 50 and 51, Milner further teaches a manual actuator (the person's hand –col. 2, line 43) and the jaw members biased in the first position (fig.1).

Regarding claims 9 and 33, Milner further teaches the puppet includes a body portion (fig.1).

Regarding claims 15 and 43, Milner teaches in figures 1 and 2 15. A sound producing apparatus comprising: a glove configured to be worn on a human hand (5); a sound producing unit located in said glove (14, fig.1), said sound producing unit including a speaker for outputting audio (fig.18); and a switch for selectively actuating said sound producing unit to initiate at least one verbal audio event (10), in response to movement of the glove (12 [The examiner takes the position that the sensor meets the definition of the claimed switch]).

Regarding claims 30 and 36, Milner teaches a verbal sound audio event (col. 4, par. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-7, 14, 16-19, 26-29, 31, 38, 39, 41, 42 and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milner in view of Dash.

Milner teaches in figures most of the elements of the claimed invention including instrumental performance (col. 1, par. 4—the examiner takes the position that the “quaking” sound of Milner meets the broad definition “instrumental performance”). However, Milner fails to teach a first portion and a second ending portion smoothly following the first portion with a natural decay, an initial portion, looped portion, and end portion, the looped portion comprising a loop start header, a sustained portion and loop end header, the sustained portion looped repeatedly while the jaw members are between the first portion and second portion and a pitch-shifting switch. Regarding claims 3, 7, 16, 19, 26, 31, 45 and 49, Dash teaches an audio event having a first portion and a second ending portion smoothly following the first portion with a natural decay (col. 9, par. 5- col. 9, par.3). It would have been obvious to one ordinary skill in the art at the time the invention was made to incorporate a first portion and second ending portion with a natural decay as taught by Dash in the audio event of Milner for the purpose of providing an electronic generation of a realistic sound(s) (col. 3, lines 12 and 13).

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Regarding claims 4-6, 17, 18, 27-29 and 46-48, Dash teaches an audio event comprising an initial portion, looped portion, and end portion, the looped portion comprising a loop start header, a sustained portion and loop end header and the sustained portion looped repeatedly while the jaw members are between the first portion and second portion (col. 8, par. 5- col. 9, par. 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an initial portion, looped portion and end portion as taught by Dash in the audio event of Milner for the purpose of providing an electronic generation of a realistic sound(s).

Regarding claims 14 and 39, Dash teaches a pitch-shifting switch (col. 9, lines 31-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a pitch-shifting switch as taught by Dash in the apparatus of Milner for the purpose of providing an electronic generation of a realistic sound(s) (col. 3, lines 12 and 13).

Claims 11-13, 20-23, 35, 37 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milner in view of Wood.

Milner teaches in figures 1 and 2 most of the claimed invention except for a program selection switch, a plurality of audio events including instrumental performance and a plurality of harmony sequences. Wood teaches in figures 1-3 a toy having program selection switch (col. 4, par. 3 and 4) that activates a different instruction modalities such as sounds, music and phrases (col. 5, par. 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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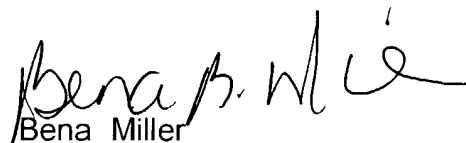
incorporate a program switch as taught by Wood in the apparatus of Milner for the purpose of producing sound, music and/or phrases.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Luchsinger teaches a sound emitting device. Severson et al teaches a method of generating continuous non-looped sound effects. Davis teaches a multiple mode sound generator. Nemoto teaches sound effects producer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Examiner  
Art Unit 3712

bbm  
February 08, 2004